

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2834 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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JITENDRA JAYANTILAL TRIVEDI

Versus

DHOLKA MUNICIPALITY

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Appearance:

MR JR NANAVATI for Petitioner

MR JIVANLAL G SHAH for Respondent No. 1

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/06/2000

ORAL JUDGEMENT

The petitioner before this Court is a daily wage employee of Dholka Municipality, the respondent herein [hereinafter referred to as, 'the Municipality']. It is the case of the petitioner that he was appointed as a

Octroi Clerk on daily wages in September 1978. The petitioner had continuously served on daily wages till the year 1984 when his service came to be terminated till the year 1984. In the month of March, 1984, the President of the Municipality passed a resolution directing absorption of the petitioner on regular establishment in the month of July, 1984. The Municipality was superseded and the Administrator by his order dated 29th July, 1984 terminated the service of the petitioner. The said order of termination was challenged before this Court in Special Civil Application No. 4087 of 1984. The said writ petition was allowed on 21st December, 1984 and the petitioner was ordered to be reinstated in service with all ancillary benefits. Accordingly, the petitioner was reinstated in service as a daily wage Octroi Clerk. It is the claim of the petitioner that since then, the Administrator passed Resolution No. 46 directing that the services of some of the employees including the petitioner herein be regularized in the cadre of Clerk in the pay Scale of Rs. 290-480 with effect from 1st August, 1986. In spite of that resolution, the same has not been implemented. Therefore, the petition.

2. It is contended that the petitioner has been serving on daily wages for long and he has a right to regular appointment.

3. The petition is contested. The Chief Officer of the Municipality has filed counter affidavit. It is submitted that the question of abolition of octroi was under consideration by the State Government and the Municipality was in no position to make regular appointments in the Octroi Department of the Municipality.

4. It appears that the petitioner was initially appointed as daily wagger and has continued to serve on daily wages all along. It is not the case of the petitioner that he was appointed as such after following the due procedure or in accordance with law. The claim of the petitioner for regular appointment on the basis of his long service on daily wages is not sustainable. The Municipality is a Local Self-Government and is governed by the rule of law. No appointment to the public employment can be permitted to be made without following due procedure and in no manner other than in accordance with law. The claim of the petitioner for being regularized in service irrespective of the manner in which he is appointed is required to be rejected. However, keeping in view the long service rendered by the

petitioner, if his service has been continued pending this petition, his case for regular appointment shall be considered alongwith other candidates as and when such appointments are being made. While considering the case of the petitioner for regular appointment, by due selection, the petitioner should be given relaxation in the upper-age limit by the number of years he has served the Municipality.

5. The petitioner has also raised a grievance regarding the quantum of wages. It is contended that wages paid to the petitioner are less than the minimum wages prescribed by the State. The averment is vague and cannot be decided in the present petition. In the event, the petitioner is not paid the minimum wages, he may pursue remedy available under the Act.

7. The petition is accordingly dismissed. Rule is discharged. Interim relief is vacated.

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Prakash\*